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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/613,296
Filing Date: July 03, 2003
Appellant(s): LAVASH, BRUCE WILLIAM

Jason J. Camp
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/21/09 appealing from the Office action mailed 5/29/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2003/0083631

Chen et al.

5-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1, 2, 5, and 10-15 are rejected under 35 U.S.C. 102(a) as being anticipated by Chen et al. US 2003/0083631.

As to claims 1 and 15, Chen discloses an absorbent article having a longitudinal axis and a periphery, the absorbent article comprising;

a. a fluid permeable facing layer 85, (paragraph 0050 and 0089 as discussed above) at least a portion of which is extensible

b. a first absorbent layer 78 joined to the facing layer, the first absorbent layer comprising at least one first absorbent layer zone of extensibility 77; Chen teaches elastic components to impart zones of extensibility, specifically to the absorbent layers. In paragraphs 0066-0068, Chen teaches an outer shaping member as part of the absorbent layer, the outer shaping member being extensible, and thus providing zones of extensibility. Chen teaches a second absorbent layer 74 disposed between the first absorbent layer and the backsheet and joined to the backsheet where the first absorbent layer is decoupled from both the second absorbent layer and the attachment zones of the fluid impermeable backsheet (Figure 6). The joining of the facing layer and the first absorbent layer is primarily at the portions of the facing layer intermediate the at least one first absorbent layer zone of enhanced extensibility.

c. a liquid impermeable backsheet 82 joined to the facing layer at the periphery;

d. fastening means disposed on at least a portion of the garment facing surface (Table 1) defining attachment zone; and

e. wherein at least a portion of the first absorbent layer is decoupled from the attachment zone of the fluid impermeable backsheet (Figure 6).

As to claim 2, the at least one first absorbent layer zone of extensibility comprise slits 77.

As to claim 5, the article comprises a second absorbent layer 74, the second absorbent layer being joined to the backsheet and decoupled from the second

absorbent layer and the attachment zones of the backsheet (Figure 6, 8B, paragraphs 0098 and 0108).

As to claim 10, see Figure 11 and paragraphs 01107 and 0040.

As to claim 11, see Figure 11.

As to claim 12, see paragraph 0118 where Chen discloses a secondary layer.

As to claim 13, see claim 0118, where Chen discloses an apertured film cover.

As to claim 14, see Table 1, materials for topsheet.

(10) Response to Argument

Appellant's arguments filed 1/21/09 have been fully considered but they are not persuasive. Appellant argues Chen does not provide any disclosure relating to the extensibility of the top layer, particularly a top layer having a zone of enhanced extensibility in registry with a zone of extensibility of an absorbent core layer that is decoupled from the attachment zones of the garment fastening means. However, Chen discloses an absorbent member having crease lines for downward deflection

(paragraphs 0038, 0040). Chen further teaches the crease lines are created by bonding a portion of the cover to a compressed portion of the absorbent material (paragraph 0050). The bonding of the top cover to the absorbent member at the crease lines creates crease lines in the top cover as well. The crease lines provide the means for enhanced extensibility for the absorbent core; therefore, the crease lines provide means for enhanced extensibility for the top cover.

Appellant repeats the argument that Chen does not disclose or suggest joining the top layer and absorbent core layer at portions intermediate the zones of extensibility.

Appellant's arguments are not commensurate with the scope of the claims. As previously stated by the Examiner, claim 1 requires the joining of the facing layer and the first absorbent layer is substantially limited to the portions of the facing layer intermediate the at least one first absorbent layer zone of enhanced extensibility. The term 'substantially' allows for some the joining of the facing layer and the first absorbent layer to be outside of the zone of enhanced extensibility.

Appellant argues Chen fails to teach a first absorbent layer comprising at least one first absorbent zone of extensibility, wherein the first absorbent zone of extensibility is decoupled from the attachment zones of the fluid impermeable backsheet. Appellant argues the outer absorbent member of Chen is joined to the backsheet via a contact adhesive and Chen does not provide any teaching that the outer absorbent member is not joined to the backsheet or that any portion of the absorbent core is decoupled from

the backsheet including the garment adhesive. Figure 2 shows attachment points 44 outside of the crotch region connecting the central absorbent member to the backsheet (paragraph 0026). Figures 6-8B show a deformed central absorbent member, particularly in Figure 6, it is clear the central absorbent member 78', 78" is decoupled from the backsheet 82 (paragraphs 0098-0099).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Jacqueline F. Stephens/
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